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September 15, 2000

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SEP 15 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WT Docket No 99-87 / In the Matter of Implementation of
Sections 309(j) and 337 of the Communications Act of 1934 as Amended
Notice of Written Ex Parte Communication

Dear Ms. Salas:

I have enclosed a copy of the Comments of Nextel Communications, Inc. filed today in the Matter of Request for Clarification of De Facto Control Policy and Request for Authority to Operate Broadband PCS and LMDS Facilities. Because these comments address matters under consideration in the above-captioned proceeding, Nextel is filing these comments as a written *ex parte* communication in Docket No. 99-87. Pursuant to Section 1.1206(b) of the Commission's rules, an original and two copies of this letter and the attachment are being submitted to the Secretary's office for the above-captioned docket.

Should there be any questions regarding this filing, please contact the undersigned.

Respectfully submitted,



Laura H. Phillips
Counsel for Nextel Communications, Inc.

LHP/css
Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

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Request for Clarification of De Facto)
Control Policy and Request for)
Authority to Operate Broadband PCS)
And LMDS Facilities Pursuant to)
Spectrum Lease Arrangement)

SEP 15 2000
DA 00-1953
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Wireless Telecommunications Bureau

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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SUMMARY

The Rural Carriers have brought to the Commission a proposal to pool their individually-held broadband Personal Communications Service (“PCS”) and Local Multipoint Distribution Service (“LMDS”) licenses and to share the costs of constructing and operating a jointly-owned wireless network. Each of the Rural Carriers would lease spectrum from their individual licenses to this joint network, while retaining ownership and control of the licenses. The Rural Carriers have requested a clarification or, if necessary, waiver of the Commission’s rules and policies regarding *de facto* transfers of control.

Nextel supports the Rural Carriers’ request for clarification. The spectrum lease and joint operating agreement they describe would advance the public interest by enabling service to begin quickly. At the same time, by permitting the carriers to retain their individual licenses, such arrangements preserve their economic incentives to invest in innovative services and new spectrum technologies in response to consumer needs and technology advances.

Accordingly, the Commission should encourage flexible spectrum leasing and use arrangements in all of the wireless services, not just for the PCS and LMDS licenses at issue herein. These arrangements – arrived at through secondary market transactions – enable service providers to respond more rapidly and efficiently to customer needs and competitive forces in the wireless marketplace. In particular, they provide the flexibility necessary for both private land mobile radio licensees and commercial mobile radio licensees to integrate their channels to offer spectrally efficient mobile communications solutions responsive to internal use and/or commercial service opportunities – while retaining the option of providing different future services as appropriate in a competitive wireless communications marketplace.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
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Request for Clarification of De Facto)	DA 00-1953
Control Policy and Request for)	
Authority to Operate Broadband PCS)	
And LMDS Facilities Pursuant to)	
Spectrum Lease Arrangement)	

To: The Wireless Telecommunications Bureau

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. ("Nextel") respectfully submits these comments in the above-captioned proceeding.¹ Nextel fully supports the Rural Carriers' request for approval of their proposed spectrum lease and joint operating agreement.² Because adoption of such flexibility would substantially promote the efficient use of mobile radio spectrum, the Wireless Telecommunications Bureau ("Bureau") should clarify expeditiously that the arrangements proposed by the Rural Carriers are permissible under Section 310(d) of the Communications Act. Nextel urges the Bureau to issue a policy statement clarifying that such flexible use arrangements are permissible for a wide range of public and private wireless services, including the Cellular Radiotelephone Service ("cellular"), Specialized Mobile Radio Service ("SMR"),

¹ Wireless Telecommunications Bureau Seeks Comment on Request for Clarification of *De Facto* Control Policy and Proposed Spectrum Lease Agreement, *Public Notice*, DA 00-1953 (August 24, 2000).

² "Rural Carriers" is the joint name for the three PCS and LMDS license holders in South Dakota and Iowa who propose a spectrum lease and joint operating agreement. The parties to this proposed agreement are Golden West Telecommunications Cooperative, Inc., Venture Wireless, Inc. and Long Lines. Ltd.

Business/Industrial Land Transportation Services (“B/ILT”), Personal Communications Service (“PCS”) and Local Multipoint Distribution Service (“LMDS”).

I. BACKGROUND

On June 30, 2000, the Rural Carriers filed a request for clarification of the Commission’s *de facto* transfer of control policy to permit them to integrate and operate a broadband PCS and LMDS network pursuant to a spectrum lease and joint operating agreement. Specifically, the Rural Carriers propose to pool spectrum from their broadband PCS and LMDS licenses and share the costs of designing, financing, constructing and operating a jointly-owned wireless network, with each of the Rural Carriers retaining individual ownership and control of its licensed spectrum.³

The Rural Carriers seek the advantages of a jointly run regional network, but each carrier-participant desires to maintain independent ownership of its licenses for a number of reasons, *e.g.*, the licenses have unequal value to the parties, the licenses have significant unrealized value, and the parties desire to retain the option of providing different services in the future in response to changing marketplace demand.⁴ They state that a spectrum lease arrangement, instead of a traditional “management agreement,” would be the optimum way to implement this plan because it would enable joint operations to be established quickly while preserving the economic incentives for individual carriers to invest in spectrum licenses and new technologies.⁵ The Rural Carriers assert that their proposal would serve the public interest by providing wireless users in

³ Rural Carriers Request at 1.

⁴ *Id.* at 3.

⁵ *Id.* at 5.

rural and other underserved areas with faster and more affordable access to advanced telecommunications and information services.⁶

Accordingly, the Rural Carriers seek clarification or, if necessary, waiver of the Commission's transfer of control policies. They believe that the proposed lease arrangements may be classified as a *de facto* transfer of control if the Bureau judges control using the criteria established in the *Intermountain Microwave* decision.⁷ If the proposed arrangements constitute a *de facto* transfer of control under Commission rules and policies, they would contravene the requirement that transfers of control or license assignments receive prior Commission approval under Section 310(d) of the Communications Act of 1934, as amended. Obtaining approval of license assignments or transfers of control, of course, is inconsistent with the Rural Carriers' desire to retain their licenses while providing spectrum capacity for use in the proposed joint regional network. Accordingly, the Rural Carriers request clarification of the scope of *Intermountain* and its applicability, if any, to the subject transaction, as well as the applicability of recent Commission decisions in the 700 MHz Guard Band proceeding that encourage novel

⁶ *Id.* They also assert that the proposed spectrum leasing arrangement would enable them to better compete with large wireless carriers in urban markets.

⁷ *Intermountain Microwave*, 24 RR 983 (1963) ("*Intermountain*"). *Intermountain*, and its progeny, have been used by the Commission to review whether a *de facto* transfer of control of a station license has occurred in violation of Section 310(d) of the Communications Act. The six indicia of control used by the Commission in making this determination are:

- (a) Does the licensee have unfettered use of all facilities and equipment?
- (b) Who controls daily operations?
- (c) Who determines and carries out the policy decisions, including preparing and filing applications with the Commission?
- (d) Who is in charge of employment, supervision and dismissal of personnel?
- (e) Who is charge of the payment of financing obligations, including expenses arising out of operating?
- (f) Who receives monies and profits from the operation of the facilities?

licensee-lessee relationships and eliminate outmoded regulatory policies that pose barriers to forming them.

Nextel is supportive of measures that foster additional spectrum flexibility. Given that wide-area SMR licenses are partially encumbered with SMR incumbents that must be interference-protected or otherwise accommodated, Nextel has been a party to a variety of secondary market transactions. Nextel shared its experience in secondary market transactions involving wireless licensees with the Commission in its recent forum on secondary spectrum markets.⁸ Nextel submits that spectrum capacity leases, such as that proposed by the Rural Carriers, can facilitate the flexible spectrum access carriers require to respond to customer needs in today's wireless marketplace. In its comments and reply comments on implementing the Balanced Budget Act of 1997, Nextel presented a flexible use plan that would permit B/ILT licensees to participate in flexible use arrangements with all other 800 MHz non-public safety spectrum users through secondary market transactions.⁹ The Rural Carriers' request affords the Bureau the opportunity to advance expeditiously the ability of wireless operators to engage in

⁸ See *Public Notice*, FCC Announces Agenda for Public Forum on Secondary Markets in Radio Spectrum, DA 00-1139 (released May 23, 2000) (noting participation of Morgan O'Brien, Vice Chairman, Nextel Communications, on Panel 1 of the Public forum held May 31, 2000).

⁹ See Comments of Nextel Communications, Inc., WT Docket No. 99-87, filed August 2, 1999 and Reply Comments, filed September 30, 1999. Nextel's proposal to introduce this critical flexibility is fully consistent with Congress' Balanced Budget Act licensing directives. To ensure that parties to WT Docket No. 99-87 are aware of the connection of the Rural Carriers' Request to the rulemaking proceeding, Nextel will file a copy of these comments as an *ex parte* communication in WT Docket No. 99-87.

flexible secondary market transactions that will promote efficient spectrum use and increase competition to the benefit of wireless communications users.¹⁰

II. THE BUREAU SHOULD CONFIRM THAT ARRANGEMENTS SUCH AS THE RURAL CARRIERS' SPECTRUM LEASE AND JOINT OPERATING ARRANGEMENT COMPLY WITH THE COMMUNICATIONS ACT.

Nextel supports the Rural Carriers' proposal to enter into a spectrum lease and joint operating agreement as consistent with the Communications Act. The Rural Carriers plan to provide innovative wireless services involving PCS and LMDS spectrum that can be expected to increase competition for wireless services, not only in South Dakota and Iowa but in the greater commercial mobile radio services ("CMRS") marketplace. Because it is in the public interest, the arrangement should be permitted without further delay.

A. The Commission Has Broad Discretion Under Section 310(d) of the Communications Act to Define the Scope of License Assignments and Transfers of Control Requiring Prior Commission Approval.

Nothing in Section 310(d) of the Act requires that the proposed transaction be treated as a transfer of control or license assignment requiring prior Commission approval. The Rural Carriers propose to form a joint operating company in which interests would be allocated among the Rural Carriers in proportion to the value of the capital and property that each contributes to the enterprise. However, the parties do not want to contribute or transfer their licenses to the joint entity for the reasons listed above. They propose instead that the joint operating company lease

¹⁰ A favorable ruling on the instant petition would eliminate cumbersome and outmoded barriers to secondary market transactions involving wireless operators, although additional rule changes or further clarifications would still be needed. For example, if a B/ILT or other private licensee chooses not to sell its frequencies to a commercial provider, but desires to permit a commercial provider to use its spectrum for commercial purposes (or wishes to convert its use to a commercial purpose), the Commission must eliminate its rules preventing a private licensee from entering into spectrum leases with commercial providers.

spectrum capacity needed to develop innovative services from the joint venture owners-licensees. The Rural Carriers each have a significant financial incentive in making the arrangement work.

In the 700 MHz Guard Band proceeding,¹¹ the Commission adopted a similar “spectrum leasing” concept in adopting the “band manager” method for allocating six MHz of 700 MHz spectrum nationwide. Under this approach, the Commission will auction spectrum to a new commercial entity, known as the “Guard Band Manager.” Guard Band Manager licenses will be awarded through competitive bidding and the Manager will *be engaged in the business of leasing spectrum for value to third parties on a for-profit basis*. It will have the flexibility to subdivide its spectrum in any manner it chooses and make it available to any system operator or end user, private or commercial, for fixed or mobile communications, without having to secure prior Commission approval for transfer, assignment or other arrangement subdividing the spectrum. The Guard Band Manager would meet a “substantial service” construction requirement during its license term, but it can meet this requirement by leasing at least 50.1% of its spectrum. The Guard Band Manager also will be responsible for coordinating and minimizing interference conflicts among its “customers” and other neighboring users in the 700 MHz band.

The Commission stated that the Guard Band Manager will have an “incentive to maximize efficient use of the spectrum” and “will have the flexibility to tailor uses” among its users, which will “promote the development and rapid deployment of new technologies, products, and services for the benefit of the public.”¹² The Commission believes that this innovative spectrum

¹¹ See In the Matter of Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000) (“Guard Band Order”).

¹² *Id.* at ¶ 29.

management approach will enable parties to more readily acquire spectrum for varied uses, while streamlining the Commission's spectrum management responsibilities. The Commission recognized that this is "an important step" in providing spectrum users with more flexibility to "obtain access to the amount of spectrum, in terms of quantity, length of time, and geographic area, that best suits their needs."¹³

In finding that Guard Band Managers are permissible under the broad licensing authority in Sections 301, 303 and 309 of the Communications Act, the Commission found that "spectrum leases" are permitted in other Commission-sanctioned commercial applications, such as allowing ITFS licensees to lease their excess capacity – up to 95% of its spectrum – to MDS licensees and in rules allowing broadcasters to lease excess DTV capacity for non-broadcast purposes. The Commission stated: "In neither of the cited instances did we find it inconsistent with our statutory licensing responsibilities to allow licensees to contract for the use of their licensed frequencies by non-licensees."¹⁴ The Commission recognized that, in the broadcast service, it holds the broadcast licensee responsible for any interference or misuse of the facilities that occurs during operations by the non-licensed user.

The Commission saw no difference in adopting the same approach for the 700 MHz Guard Band. The Commission ruled that the Guard Band Manager concept "is consistent with the requirement in Section 310(d) of the Communications Act that licensees retain ultimate *de facto* control of their licenses" because Guard Band Managers will "have full authority and the duty to take whatever actions are necessary to ensure third-party compliance with the Act and

¹³ *Id.* at ¶ 31.

¹⁴ *Id.* at ¶ 42.

[the Commission's] rules."¹⁵ The Bureau should apply these same principles to the instant spectrum lease arrangement.¹⁶

Pursuant to Section 309(a) of the Communications Act, the Commission has previously determined that the public interest, convenience and necessity was served by granting the license applications of the Rural Carriers. As with any other licensee, the Commission holds the Rural Carriers directly responsible for compliance with all obligations that the Communications Act and the Commission's rules impose on licensees (such as prevention of harmful interference, Universal Service obligations, E911 responsibilities and construction requirements). Furthermore, as it did in the Guard Band proceeding, the Commission can explicitly retain authority over the Rural Carriers or other licensees overseeing a third-party spectrum operator, under a variety of enforcement sections of the Act, including Sections 303, 312 and 503.¹⁷ Because the Guard Band

¹⁵ *Id.* at ¶ 46.

¹⁶ The Commission has permitted lease-type arrangements similar to the Rural Carriers' in other contexts. Indeed, for more than twenty years, the Commission has approved the use of long-term arrangements to access the capacity of U.S.-licensed satellite facilities. Permissible arrangements include long-term transponder leases (*e.g.*, multi-year to life-of-satellite lease terms) and the sale of individual satellite transponders. *See Application of Satellite Business Systems for Modification of Domestic Fixed-Satellite Space Station Authorization to Permit Non-common Carrier Transponder Transactions, Memorandum Opinion, Order and Authorization*, 95 FCC 2d 866 (1983); *see also Domestic Fixed-Satellite Transponder Sales, Memorandum Opinion, Order and Authorization*, 90 FCC 2d 1238 (1982). Long-term lease arrangements and transponder sales have been authorized on a non-common carrier basis. *See RCA American Communications, Memorandum Opinion and Order*, 89 FCC 2d 1070, 1077 (1982); National Aeronautics and Space Administration, *Declaratory Ruling*, 61 FCC 2d 56 (1976); *see also Domestic Fixed-Satellite Transponder Sales, Memorandum Opinion, Order and Authorization*, 90 FCC 2d 1238 (1982). The Commission has approved such arrangements because licensees and their customers need to enter into stable relationships, and such arrangements serve important public interest purposes, including risk sharing, assured access to capacity and more certain system planning. *See Application of Satellite Business Systems for Modification of Domestic Fixed-Satellite Space Station Authorization to Permit Non-common Carrier Transponder Transactions, Memorandum Opinion, Order and Authorization*, 95 FCC 2d 866 (1983).

¹⁷ Guard Band Order at ¶ 47.

licensee retains the ultimate responsibility for compliance, the Commission found that the licensing structure was consistent with the Communications Act and no further separate approval would be required under Section 310(d) of the Communications Act for the Guard Band licensees to make spectrum available.¹⁸ For all these reasons, the Bureau has the authority to find an arrangement of the type proposed here meets this standard as well.

B. The *Intermountain* Criteria Should No Longer Be Applied to Prohibit Innovative Spectrum Management Structures

Although Section 310(d) poses no obstacle to the proposed arrangement, the Bureau also requested comment on whether the proposed arrangement meets the *Intermountain* criteria for assessing whether a *de facto* transfer of control has occurred. The Rural Carriers state that the proposed spectrum lease may not comport with each of the factors in *Intermountain* and could be considered a *de facto* transfer of control of the subject licenses under that analysis. The *Intermountain* test, however, is only one of several sets of criteria that the Commission has adopted for various services at various stages of development and in various situations to guide its assessments of licensee control.¹⁹ With specific reference to *Intermountain*, the D.C. Circuit has recognized that the Commission may overrule or limit its decisions by advancing a reasoned explanation for the change.²⁰ Recent decisions by the Commission, as outlined above, together

¹⁸ Guard Band Order at ¶ 46.

¹⁹ In a 1998 Wireless Telecommunications Bureau LMDS licensing decision, for example, the Bureau determined that a party other than the named applicant was in *de facto* control of the applicant. Despite this finding, however, the Bureau granted the application for license while denying the applicant the benefit of the 45% bidding credit to which it had claimed entitlement. *Baker Creek Communications, L.P.*, 13 FCC Rcd. 18709 (1998).

²⁰ See *Telephone and Data Systems, Inc. v. FCC*, 19 F.3d 1327 (1994) (remanding a decision resting on the *Intermountain* criteria with instructions for the Commission to “bring its decision into compliance with agency precedent or explain its departure”).

with the Volunteers in Technical Assistance (“VITA”) line of satellite cases cited by the Rural Carriers, highlight the fissures in *Intermountain*. *Intermountain* should not stand as a bar to a mutually agreed upon lawful transaction between a licensee and another party.²¹ In the context of proposed management agreements or spectrum lease agreements, it should be expressly overturned or limited either by this proceeding or in a policy statement confirming that arrangements such as that proposed by the Rural Carriers comport with Section 310(d) and the Commission’s rules.²² Spectrum leases, however, should not be a means for entities that received their licenses under the entrepreneur/small business rules to avoid their obligation under the program to be substantially involved in the running of the licensed enterprise. The Commission should make this point explicit in its ruling on the instant petition.

²¹ In the Secondary Markets Forum, on the question of applicability of *Intermountain* to a proposed lease arrangement, Dr. Robert Pepper, Chief of the Commission’s Office of Plans and Policy, stated: “I would look at the band manager, 700 MHz Order [a]s our current thinking on that. We didn’t purport to overrule *Intermountain*, but if you interpret *Intermountain* in light of what’s explicitly permitted there, I think we tried to be quite clear as what we were permitting so that people will not have [an] *Intermountain* problem.” See Secondary Markets Forum transcript, May 31, 2000, at 123-124.

²² Because *Intermountain* and its subsequent cases are Commission decisions, they can be expressly overruled or limited. The *Intermountain* criteria are not codified in the Communications Act. They developed out of a private microwave decision in the 1960s, and were subsequently applied to common carrier and commercial wireless providers. The Commission’s application of *Intermountain* to SMR providers dates only from the Commission’s proceedings implementing the 1993 Budget Act and even more recently in the case of PMRS providers.

III. IN CONFIRMING THE PERMISSIBILITY OF THE RURAL CARRIERS' PROPOSED ARRANGEMENT, THE BUREAU NECESSARILY MUST RECOGNIZE THAT SIMILARLY SITUATED ENTITIES MAY ENGAGE IN SIMILAR ARRANGEMENTS

The Rural Carriers' proposal serves the public interest.²³ The parties thereto seek to combine their resources to build and operate a more efficient and successful wireless network. Other licensees also desire the flexibility to combine their expertise and spectrum position to create efficiencies and provide better service to the public, while retaining the ability to provide stand-alone services in the future.²⁴

Nextel has made significant use of both the traditional management agreements and purchases of spectrum licenses. Nextel has also had discussions with SMR, B/ILT and other licensees who have indicated their willingness to enter mutually beneficial long-term lease arrangements like the one proposed herein. Similarly, as part of the upper-200 channel SMR "relocation" process, Nextel would like, in some circumstances, to "lease" its auction-acquired spectrum to providers in rural areas. This approach would allow the lessee to serve the public

²³ While the Rural Carriers state that they would accept a rule waiver, they cite no specific rule section that must be waived to proceed with their proposed arrangement. Furthermore, the Rural Carriers do not explicitly plead the typical waiver criteria. Moreover, the issue presented here is one of the proper level of licensee control over its spectrum, and the Commission cannot reasonably define "control" in different ways in the same service based on the nature of the parties, or an assessment of other unrelated public benefits that the transaction might generate. In addition, permitting Guard Band Managers to "lease" the spectrum to commercial providers cannot be easily distinguished from the instant proposal by PCS/LMDS licensees. Favorable action on a waiver, if granted principally upon grounds of service to rural markets, would be particularly questionable.

²⁴ Such flexibility is consistent with the Congressional goals underlying Section 332 of the Communications Act, as amended. See, e.g., Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411, ¶ 15 (1994). "We believe the actions we take . . . will promote competition in the mobile services marketplace and will thus serve the interests of consumers while also benefiting the national economy. Moreover, . . . we establish, as a principal objective, the goal of ensuring

while Nextel focuses its immediate construction efforts in larger markets. Today, however, the rule of *Intermountain* forces these potentially beneficial transactions to be cast into a cumbersome, strained regulatory framework that did not anticipate a competitive wireless marketplace with dynamic spectrum demand by carriers in response to evolving technologies, strategies and customer interests. *Intermountain*, as it has been applied to date, compromises optimal spectrum use or economic viability – or, in some cases, forces a potentially desirable transaction to be abandoned altogether. As a result, some transactions that would benefit the public and promote competition are never undertaken because of the risk of losing the licenses or being found to be in violation of Commission policy (but not the Communications Act, any other statute or the Commission's rules).

The instant transaction and transactions discussed at the Secondary Markets Forum will promote competitive vigor in the wireless industry. In fact, they would increase competition by encouraging new competitors and incumbent carriers to enter spectrum arrangements that are economic and efficient. Nextel believes that these spectrum use arrangements would complement purchase and sale transactions as well as Commission-held auctions.

Wireless licensees, be they SMR, B/ILT, PCS or others, need the flexibility to participate in "secondary market" alternatives in the course of their businesses. The Bureau can substantially advance the realization of such spectrum use and spectrum management flexibility by stating that such arrangements do not implicate the transfer of control "prior approval" requirements of Section 310(d) of the Act so long as the arrangements provide for the licensee to retain overall

that unwarranted regulatory burdens are not imposed upon any mobile radio licensees who are classified as CMRS providers. . . .").

responsibility for compliance with the Act and the Commission's rules and policies.²⁵ This practice would assure that the Commission retains supervisory and enforcement authority over individual licensees responsible for compliance with the Commission's rules. Thus, such arrangements enable the Commission to satisfy its statutory responsibilities while permitting operators the spectrum access flexibility they need to offer a greater level of services to the public.²⁶

IV. CONCLUSION

This proceeding provides an opportunity to confirm that any authorized Commission licensee is permitted to make any lawful, mutually agreeable arrangement with another licensee or

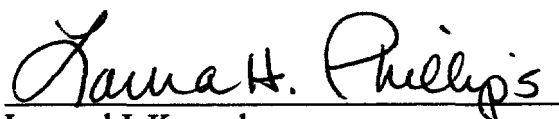
²⁵ As discussed above, B/ILT licensees should be able to sell or swap their channels to commercial licensees for providing commercial service if they choose to do so voluntarily. Of course, such license assignments would require prior Commission approval under Section 310(d).

²⁶ The Commission should state that it is prepared to review and permit similar arrangements on an expedited basis.

third-party user – be it joint venture, management agreement or a spectrum lease. This would increase competition and promote innovative services throughout the industry to the benefit of the public.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

A handwritten signature in cursive script, appearing to read "Laura H. Phillips", is written over a horizontal line.

Leonard J. Kennedy

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